

FORUM

Irreconcilable Differences? Problems with Unprovenanced Antiquities

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In 1995, Geraldine Norman, then art market correspondent for the *Independent* newspaper, contributed a short chapter to the volume *Antiquities Trade or Betrayed: Legal, Ethical and Conservation Issues* entitled “Bad Laws are Made to be Broken”. The laws to which she refers are national patrimony laws and export control legislation by which many source countries endeavour to protect their cultural heritage. She suggests that the laws “run counter to human nature and are therefore bad law”. She elaborates on this concluding that “If the laws were internationally perceived as fair, upright people would not break them”. She states that “In twenty years as an art market correspondent, I have never met an antiquities dealer who did not happily handle smuggled goods”. It is her contention that “the laws in the countries of origin make no sense” (Norman 1995: 143-4).

The arguments that are used by dealers and collectors to discredit source country legislation will be familiar through Brodie, Doole and Watson’s (2000) report entitled *Stealing History: The Illicit Trade in Cultural Material* and more recently through Mackenzie’s (2005) *Going, Going, Gone: Regulating the Market in Illicit Antiquities*, among many other publications. For this reason, only some of these issues will be touched upon here.

How such thinking is rationalised is explained ably by Mackenzie in his exploration of the “Sociology and Psychology of the Art Market”. He draws on Sykes and Matza’s work that “documented five techniques of neutralisation [...] denial of responsibility; denial of injury; denial of the victim; condemnation of the condemners; and an appeal to higher loyalties” (Mackenzie 2005: 203).

Part of this negating process involves discounting the state’s entitlement to claim ownership of its antiquities, by which illegal exportation becomes an act of theft. Safeguarding heritage is viewed as unreasonable when restrictions of current national boundaries are applied. The argument takes statements intended to engender mutual respect and protection of the tangible remains of all people’s pasts and inverts them by demanding that, since the past belongs to all humankind, entitlement to possess should be unrestricted by regulation, leaving cultural objects free to circulate on the open market. Since source countries do not implement their legislation by securing their borders and since they do not have sufficient resources to conserve their antiquities, then those who wish to ignore national patrimony laws feel justified in so doing. Sharing past cultures by means of loans to museums and exchanges rather than transfer of ownership is

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largely ignored in the prosecution of free-trade arguments.

Another difficulty is the common failure of those arguing for a free trade to separate out antiquities from the rest of cultural property and to recognise their exceptionality. This is crucial because of the extreme difficulty in providing legal proof of ownership since clandestine excavation and successful insinuation of such material into the market relies on obscuring provenance. In 1994, I presented a paper arguing for this distinction to be made and for the consequences to be acknowledged if Merryman's "Draft Principles to Govern a Licit International Traffic in Cultural Property" were to be acceptable to the archaeological community (Tubb 1996; Merryman 1996/2000). Despite recognition of this in the 1995 UNIDROIT *Convention on Stolen or Illegally Exported Cultural Objects* and in the UK's (except Scotland) 2003 *Dealing in Cultural Objects (Offences) Act* the tendency to conflate art and antiques with antiquities persists.

The archaeological concern for context is dismissed in various ways. In a recent article in the *New Yorker*, Carlos Picón, curator of the Greek and Roman Department at the Metropolitan Museum of Art, is quoted as stating "some archeologists only care about the dirt" (Mead, 2007: 61). On the other hand, he is also reported to have told Mead that "Archaeologists [...] are jealous of tomb robbers: 'They go on an excavation and find nothing; but an uneducated person, because they have the instinct of a Gypsy, they find a tomb'", contradictory and objectionable in equal measure. This statement is certainly interesting in that it inadvertently reveals the fact that much scientific excavation does not yield vast quantities of artefacts that could be utilised to satisfy market demand. Given increased concerns about human remains, his statement that "I don't care about the bones, and the person buried there. [...] What can you know about them, anyway? That he or she died at the age of thirty-five, with no teeth?" betrays a disregard for the sensitivities of others. This is surprising in that it is voiced by a curator in such an eminent institution. At the same time, it is dismissive of the wealth of information recoverable by physical anthropologists that enriches and contributes to our knowledge of past societies by helping to construct an understanding of diet, illnesses, ritual practices, customs and so forth.

Part of the reason why so many archaeologists and heritage professionals advocate avoiding the study of unprovenanced artefacts is because their lack of origin makes it impossible to distinguish the looted from the historically removed material. Many dealers and collectors argue that the majority of the material on the market has come to light as the result of chance finds. The recovery of such material is by and large consequent upon agricultural activities and modern development projects, but these objects cannot be distinguished from pieces that have been recovered by the destructive process of mining archaeological sites for saleable finds. Their export is also likely to have been in contravention of the laws of the country of origin. The threat that conflict, modern development and agriculture pose to archaeology is real and the pressure is often insuperable. Perhaps it is in recognition of the fact that this loss is unavoidable that causes archaeologists to feel so devastated when confronted by pock-marked site after cratered site; sites that have clearly been destroyed to recover saleable finds. The scale of this damage is vast and impacts on sites that would otherwise be unthreatened, simply to supply the market.

This comes at a devastatingly high cost to our understanding of the past. (See, for example, Fig. 1, the site of Isin, in southern Iraq) Fragile remains tend not to survive in these circumstances. The obliteration of a site and the loss of knowledge is the same whether or not the recovered objects are commonplace or spectacular. Which carries the greater resonance, the gold wreath of oak leaves and acorns found at Vergina lying on the bones of Phillip of Macedon (Andronicos 1987: 171-173) or the gold funerary wreath with blue and green glass-paste inlays in the J. Paul Getty Museum (Towne-Markus 1997: 62-63)? Both are undeniably exquisite, but the latter has been shorn of its past associations.



Figure 1. Aerial view of the devastated site of Isin, southern Iraq, in September 2003. Looter pits eclipse scientifically excavated areas identifiable by walls and mounds of spoil in their immediate proximity. Courtesy of John Russell, Massachusetts College of Art and Design, Boston.

In recent years sites in Jordan have suffered from looting. Much of the material that has appeared on the market while distinctive, making it geographically and chronologically identifiable, is low value domestic pottery vessels. Assemblages of similar objects have been discovered at sites in the region that are being scientifically excavated. One such example is Tell es Sa'idiyeh, the biblical city of Zarethan, being excavated by a British Museum expedition under the direction of Jonathan Tubb. Here a 28th century BC public building destroyed by fire was discovered. A small room thought to have been a scullery yielded a dinner setting for eleven people that included dishes, bowls, mugs, flint knives, bone points and food residues identified as grapes, capers, olives, figs and pomegranate that had been cleared out of the dining area and stacked prior to cleaning

(Figs. 2 and 3). The discovery of wheat on the ear actually made it possible to date the time of year of the destruction of the building to June or July (Tubb 2002: 46-48). Had finds in the scullery been looted, the food residues would have been discarded and the dinner setting split up and sold as individual, rather unremarkable ceramic vessels.



Figure 2. Scullery (Early Bronze Age, 2750 B.C.), Tell es- Sa'idiyeh, Jordan, with finds in situ. Courtesy of Jonathan Tubb, British Museum.

It is thus with a sense of something approaching futility that I view the willingness of collectors, dealers and many scholars to dismiss legislation designed to confer protection to archaeological sites as bad law that many feel entitled to ignore. It is market demand that drives the looting. Since looted material cannot be winnowed out from other unprovenanced artefacts, many archaeologists and conservators have elected not to work on unprovenanced objects. Respected scholars such as John Boardman have decried this as a form of censorship (Boardman 2006: 39-40). If so, in my experience, it is self-censorship. However, authentication and conservation of this material increases its cash value substantially, as does scholarly engagement with it, by publishing learned articles, translating obscure texts and inscriptions and so forth. For example, an untranslated incantation bowl with an Aramaic inscription (dating anywhere from the fifth to eighth century AD) is apt to sell for £300; the same bowl translated will sell for £3000 (Brodie, pers. comm.). Therein lies the aversion to working on this material. It feels wrong ethically. In many senses, it 'launders' objects.

There is a palpable frustration in seeing a looted site, in knowing the types of artefact that will have been recovered from it, in seeing those types of artefact on the market in the UK and offered for sale on the internet and in being powerless to do anything because the exact find spot cannot be identified or the date of its illicit removal from the

country of origin cannot be established. This is the norm for clandestinely excavated objects. The likelihood of being prosecuted for trade in this material has been derisively low. This view was reinforced by Mackenzie's (2005: 213, my emphasis) research in his statement that "The market interview sample displayed a high level of desire to buy unprovenanced antiquities, a *perception of adverse consequences (penal and other) at or approaching nil*, and a routine approach to the purchase of unprovenanced antiquities which suggested that the act had an established place in their 'comfort zone' of action".



Figure 3: Reconstruction of the scullery in the British Museum. The original placing of the individual artefacts has been retained in the display. (Please note that the objects are in the Museum as a result of an authorised division between the Department of Antiquities of Jordan and the expedition.) Courtesy of Jonathan Tubb, British Museum.

However, a coalescence of events in Italy have resulted in hard evidence becoming available leading to prosecutions of Marion True, former Curator of Antiquities at the J. Paul Getty Museum, Robert Hecht, a dealer of long-standing and some notoriety, and Giacomo Medici, accused of masterminding a trafficking ring siphoning looted Italian antiquities out of Italy via Switzerland. Moves to indict these individuals first came to the attention of the press in late 2003 (see, for example, D'Emilio 2003). There has been extensive coverage particularly in 2005-6 and an authoritative account is given by Peter Watson and Cecilia Todeschini in their book *The Medici Conspiracy: The Illicit Journey of Looted Antiquities from Italy's Tomb Raiders to the World's Greatest Museums* (2006). This has helped to put paid to those who were formerly so ready to dismiss archaeological concerns as being simply anecdotal with no basis in the truth.

The potency of the evidence has led a number of museums in the United States to sign agreements with the Italian authorities for the return of contested objects rather than sour relations and enter into litigation. Most recently, the J. Paul Getty Museum issued a press release announcing the signing of an agreement on 25th September 2007 to return 40 objects (J. Paul Getty Museum 2007). Among these is an akrolithic sculpture thought to be of Aphrodite that was purchased in 1988 from a London dealer for approximately 20 million dollars (Slayman, 2006). The Boston Museum of Fine Arts signed an agreement for the return of 13 objects on 28th September 2006 (Museum of Fine Arts 2006). And on 21st February 2006 the Metropolitan Museum of Art agreed to return 21 artefacts to Italy as reported in the *New York Times* (Povoledo 2006).

It is worth considering an example from the above and the Euphronios krater is interesting and serves well in this capacity. It was purchased by the Metropolitan in 1972 from Robert Hecht and concerns about its provenance were raised immediately. The *New York Times* conducted a two-month investigation into its origins that was given extensive coverage from 19th - 24th February 1973. Dietrich von Bothmer, Picón's predecessor, is quoted as having said "I want to know where it was made, who did it and when [...] I want to know whether it is genuine or fake. Its intermediate history is not important to archaeology. Why can't people look at it simply as archeologists do, as an art object" (Gage 1973). The Metropolitan paid one million dollars for the pot, an astronomical figure at that time. Gage quotes an editorial in *Archeology* which remarked that the sum paid "cannot fail to encourage speculators [...] And what of the thieves? [...] the brigands whose work has scarred archeological sites around the world. What visions of quick riches are now conveyed to them by this one transaction?". The Metropolitan will retain the krater until 15th January 2008 under the terms of its agreement with the Italian Ministry of Culture. It will then be returned "in exchange for a mutually agreed-upon artefact of equal importance" (Povoledo 2006). The renowned scholar John Boardman regrets this decision and clearly appears to share von Bothmer's view stating in an interview with Diana Scarisbrick, an independent art historian, that "The vase was made in Athens, traded to Italy in antiquity, then traded to New York in the 20th century. It might be argued that it has been a more effective cultural inspiration in New York than it ever was in Greece, where it was made, or Italy, where it was soon put in a tomb. Its tomb context was its least important feature. We know who painted it, when and where, and can explain its decoration in detail" (Scarisbrick 2006). The krater is clearly a superb creation. The loss of contextual information when it was looted from an Etruscan tomb (thought to be in Cerveteri) should not be disregarded. This does not detract from recognising it as a master work of art. Equally, under the terms of Italian legislation it is stolen property and its removal was criminal involving theft and smuggling.

Has the evidence that the Italian authorities are using in their negotiations had an impact on collecting practices? In the Getty's press release, Michael Brand states that "The signing of this agreement, coupled with *our new, tougher acquisitions policy*, means we can put the issues regarding these objects behind us and focus on building even stronger collaborations with Italy" (J. Paul Getty Museum 2007, my emphasis). Even Picón, though he may chafe at the restraints and rail at the archaeological commu-

nity acknowledges that “Ninety-nine-point-nine-nine-nine per cent of what we have bought in the last generation has been absolutely and straightforwardly documented. Museums had better continue collecting. The rules change, or evolve, like everything else” (Mead 2007: 55). However, Philippe de Montebello, director of the Metropolitan, concurs with Professor Boardman when he states that “Ninety-nine percent of everything we know about antiquity we know from objects that were not out of digs’ [...] and cit[ing] the Euphronios krater [...] as an example. ‘How much more would you learn from knowing which particular hole in – supposedly Cerveteri – it came out of? [...] Everything is on the vase.’” (Kennedy and Eakin 2006). It is telling when he continues, stating that “the amount of archaeological material that is acquired by American museums – which has already enormously diminished in the last few years – will become a trickle. [...] We buy almost nothing anymore”.

Italy and other source countries’ pursuit of their cultural heritage – acts of theft under the terms of their legislation – is seen as being irksome and unreasonable. The persistence of such attitudes is more likely to lead to source countries becoming more hard-line and it is worth reiterating that loans and exchanges provide opportunities for sharing without the need for acquisition. The monetary value of the artefacts that have had to be returned amounts to millions of pounds/dollars. Museums surely cannot continue to sustain such losses. Therefore, trustees and those responsible for deciding whether to acquire a piece need to inquire closely into questions of provenance. Were the trade to shed its acknowledged secretive nature and adopt transparent policies, much of the wrangling could be avoided. The apparent unwillingness to move in this direction at the very least suggests that much of the stock is suspect.

Clearly, many collectors, dealers, museum curators and academics remain unconvinced of the importance of context and of the dubious ethics of handling stolen goods. As an archaeological conservator, I was dismayed when Andrew Oddy, the former Keeper of Conservation at the British Museum and then President of the International Institute for the Conservation of Historic and Artistic Works, wrote in a book review of his disagreement with the author [Elizabeth Pye] over the issue of conservators never working on “an object they believe to be looted from an archaeological site and illegally exported”. He asserted that “Surely, if an object is in need of conservation, we as a profession should supply that need – especially if the object is actively deteriorating” (Oddy 2005: 19). In the process of providing such care, the conservator’s condition report authenticates the artefact, and the conservator’s actions may remove residues that would obscure its origins, arrest its deterioration and make it more interpretable and attractive, thereby rendering it much more valuable. There is an enormous amount of material needing the attention of a conservator that is legitimate. Archaeological conservation is intended to recover information about finds that feeds into the archaeological record. It is disheartening when such an eminent representative of the profession ignores these implications contingent upon his advocacy to work on material without regard to its provenance.

A colleague in UCL, Mark Geller, the Director of the Institute for Jewish Studies, argues cogently for his entitlement to study 650 incantation bowls that had been loaned

to UCL by a private collector. However, his statement also states that “Within the past decade, hundreds of Aramaic incantation bowls have appeared on the antiquities market, collected from archaeological sites; there is no evidence that these objects have been stolen from a museum. As such, there is no identifiable owner” (Geller 2004). This ignores the fact that the probable country of origin, namely Iraq, has had protective legislation in place since 1936. A two-year investigation established by UCL investigated the provenance of the bowls. Sadly, the report, which was to have informed future policy for the whole of UCL, will not be published as the result of a settlement between the collector and UCL (Bailey 2007; Balter 2007).

The Institute of Archaeology can be justly proud of the fact that it has a strong policy regarding illicitly traded antiquities. Because of the difficulty in distinguishing these objects from those that have been in circulation prior to 1970 (a convenient watershed based on the date of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property), the staff have chosen not to study unprovenanced antiquities except on behalf of the police, courts or government of origin (Tubb 2002: 295-299). The stance is governed not merely by recognition of international and national legislation but also for ethical reasons. Unfortunately, it is clear that many still do not share our views.

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